

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SEATTLE PACIFIC UNIVERSITY

Plaintiff,

v.

ROBERT FERGUSON, in his official
capacity as Attorney General of Washington

Defendant.

No. 3:22-cv-05540-BJR

MODEL STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: records of complaints related to employment and ordinarily
4 treated as confidential; details regarding employee discipline; forms and information containing
5 personally identifiable information (PII), medical, or salary information; documents subject to
6 confidentiality agreements; and any other documents or information revealing information
7 regarding an employee or applicant’s personal history, misconduct allegations, sexual orientation,
8 and/or personal relationships.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential material (as
11 defined above), but also (1) any information copied or extracted from confidential material; (2) all
12 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
13 conversations, or presentations by parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover information that is in
15 the public domain or becomes part of the public domain through trial or otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
18 produced by another party or by a non-party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation, including any appeal thereof. Confidential material
20 may be disclosed only to the categories of persons and under the conditions described in this
21 agreement. Confidential material must be stored and maintained by a receiving party at a location
22 and in a secure manner that ensures that access is limited to the persons authorized under this
23 agreement.

24 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
25 the court or permitted in writing by the designating party, a receiving party may disclose any
26 confidential material only to:
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- 1 (a) the receiving party's counsel of record in this action, as well as employees
- 2 of counsel to whom it is reasonably necessary to disclose the information
- 3 for this litigation;
- 4 (b) the officers, directors, and employees (including in house counsel) of the
- 5 receiving party to whom disclosure is reasonably necessary for this
- 6 litigation, unless the parties agree that a particular document or material
- 7 produced is for Attorney's Eyes Only and is so designated;
- 8 (c) experts and consultants to whom disclosure is reasonably necessary for
- 9 this litigation and who have signed the "Acknowledgment and Agreement
- 10 to Be Bound" (Exhibit A);
- 11 (d) the court, court personnel, and court reporters and their staff;
- 12 (e) copy or imaging services retained by counsel to assist in the duplication of
- 13 confidential material, provided that counsel for the party retaining the
- 14 copy or imaging service instructs the service not to disclose any
- 15 confidential material to third parties and to immediately return all originals
- 16 and copies of any confidential material;
- 17 (f) during their depositions, witnesses in the action to whom disclosure is
- 18 reasonably necessary and who have signed the "Acknowledgment and
- 19 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
- 20 designating party or ordered by the court. Pages of transcribed deposition
- 21 testimony or exhibits to depositions that reveal confidential material must
- 22 be separately bound by the court reporter and may not be disclosed to
- 23 anyone except as permitted under this agreement;
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(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated for
2 protection do not qualify for protection, the designating party must promptly notify all other parties
3 that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
5 (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered,
6 disclosure or discovery material that qualifies for protection under this agreement must be clearly
7 so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
9 deposition exhibits, but excluding transcripts of depositions or other pretrial
10 or trial proceedings), the designating party must affix the word
11 "CONFIDENTIAL" to each page that contains confidential material. If only
12 a portion or portions of the material on a page qualifies for protection, the
13 producing party also must clearly identify the protected portion(s) (*e.g.*, by
14 making appropriate markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the parties
16 and any participating non-parties must identify on the record, during the
17 deposition or other pretrial proceeding, all protected testimony, without
18 prejudice to their right to so designate other testimony after reviewing the
19 transcript. Any party or non-party may, within fifteen days after receiving
20 the transcript of the deposition or other pretrial proceeding, designate
21 portions of the transcript, or exhibits thereto, as confidential. If a party or
22 non-party desires to protect confidential information at trial, the issue
23 should be addressed during the pre-trial conference.

24 (c) Other tangible items: the producing party must affix in a prominent place
25 on the exterior of the container or containers in which the information or
26 item is stored the word "CONFIDENTIAL." If only a portion or portions of
27 the information or item warrant protection, the producing party, to the extent
28 practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is treated
5 in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
14 confidential designations without court involvement. Any motion regarding confidential
15 designations or for a protective order must include a certification, in the motion or in a declaration
16 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
17 affected parties in an effort to resolve the dispute without court action. The certification must list
18 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
19 to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under Local
22 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
26 the material in question as confidential until the court rules on the challenge.

27 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
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1 LITIGATION

2 If a party is served with a subpoena or a court order issued in other litigation that compels
3 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
4 must:

- 5 (a) promptly notify the designating party in writing and include a copy of the
6 subpoena or court order;
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8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this agreement. Such notification shall
11 include a copy of this agreement; and
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13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
14 the designating party whose confidential material may be affected.

15 8. WASHINGTON PUBLIC RECORDS ACT

16 Nothing in this Protective Order shall be construed to require the Civil Rights Division of
17 the Washington Attorney General’s Office (hereinafter “CRD”) to violate the terms of
18 Washington’s Public Records’ Act, RCW 42.56, RCW 40.14, which governs preservation and
19 destruction of government records, or to violate any other statute, administrative rule, or court rule,
20 to the degree such statutes or rules would compel disclosure despite the order entered in this case.
21 If at any time CRD receives a request pursuant to the Washington Public Records Act, RCW 42.56,
22 or any other statute, administrative rule, or court rule that would compel disclosure of any
23 documents or information designated in this action as “Confidential,” CRD shall give written
24 notice and a copy of the request to the designating party, through its attorney of record, within five
25 (5) business days of receiving the request or determining that the request calls for documents or
26 information designated in this action as “Confidential.” If the requesting party seeks to compel
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1 CRD to disclose the documents or information designated as “Confidential” through a proceeding
2 before a court or regulatory body, CRD shall provide the designating party, through its attorney of
3 record, with notice of the proceeding within five (5) business days of service of such proceeding.
4 CRD will not produce confidential information or documents subject to such a request unless either
5 authorized by the designating party to do so, or if the designating party seeks judicial intervention
6 within the time allotted for CRD to respond to the request, if CRD is later ordered to do so by the
7 court.
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9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
11 material to any person or in any circumstance not authorized under this agreement, the receiving
12 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
13 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
15 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
16 Bound” that is attached hereto as Exhibit A.

17 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
18 **MATERIAL**

19 When a producing party gives notice to receiving parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the obligations of the
21 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
22 is not intended to modify whatever procedure may be established in an e-discovery order or
23 agreement that provides for production without prior privilege review. The parties agree to the
24 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

25 **11. NON TERMINATION AND RETURN OF DOCUMENTS**

26 Unless prohibited by law, within 60 days after the termination of this action, including all
27 appeals, each receiving party must return all confidential material to the producing party, including
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1 all copies, extracts and summaries thereof, or may certify to the producing party that they have
2 deleted and destroyed these materials.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
6 product, even if such materials contain confidential material.

7 To the extent confidential material subject to this protective order is retained pursuant to
8 the Public Records' Act, Wash. Rev. Code 42.56 and Wash. Rev. Code 40.14, counsel must make
9 reasonable efforts to destroy these materials in good faith upon expiration of the applicable records
10 retention schedule. Nothing in this provision should be construed to eliminate the producing party's
11 obligation to comply with the notice requirements in Section 8 of this agreement.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: November 27, 2024

s/ Lori H. Windham
Attorneys for Plaintiff

DATED: November 27, 2024

s/ May Che
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED: _____

Hon. Barbara J. Rothstein
United States District Court Judge